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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

JOHN FITISEMANU, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 1:18-cv-00036
Judge Clark Waddoups

**INTERVENORS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Intervenors, the American Samoa Government and Congresswoman Aumua Amata, respectfully submit this notice of supplemental authority pursuant to Local Civil Rule 7-1(b)(4) and Local Civil Rule 56-1(e). The supplemental authority arose after briefing and oral argument on the motion to dismiss and cross-motions for summary judgment, which are currently pending before the Court.

1. On July 29, 2019, the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *Davis v. Guam*, No. 17-15719 (9th Cir. 2019) (attached as “Exhibit A”). In that opinion, the Ninth Circuit held that Guam’s 2000 Plebiscite Law, provisions of which restricted voting to “Native Inhabitants of Guam,” constitutes an impermissible racial classification in violation of the Fifteenth Amendment. *Id.* at 4 (Slip Op.).

2. In particular, the Ninth Circuit held that the “Native Inhabitants of Guam’ voter eligibility restriction so closely parallels a racial classification as to be a proxy for race,” so “[i]ts use as a voting qualification . . . violates the Fifteenth Amendment as extended to Congress to Guam.” *Id.* In the underlying briefing, both plaintiff-appellee Arnold Davis—represented, like Plaintiffs in this case, by counsel from Gibson, Dunn & Crutcher LLP’s Washington, D.C. office—and the U.S. government as *amicus curiae*, emphasized that the U.S. Constitution, including the Equal Protection Clause of the Fourteenth Amendment, applies “with full force” to Guam. *See* Resp. Br. for Appellee at 49 (attached as “Exhibit B”); Br. for U.S. as Amicus Curiae Supporting Pl.-Appellee & Urging Affirmance at 24-25 (attached as “Exhibit C”).

3. The analysis contained in the Ninth Circuit’s opinion is pertinent and related to whether imposing birthright citizenship “would be ‘impracticable and anomalous,’” considering the “particular circumstances” of American Samoa. *Boumediene v. Bush*, 553 U.S. 723, 759 (2008) (quoting *Reid v. Covert*, 354 U.S. 1, 75 (1957)); *see Tuaua v. United States*, 788 F.3d 300,

310 (D.C. Cir. 2015). It also informs Intervenor's arguments that the judicial extension of U.S. citizenship could threaten *fa'a Samoa*, as raised in the motion to dismiss and summary judgment briefing, *see, e.g.*, Intervenor's Br. at 1-2, 5-6, 10-15 [ECF No. 89], and at oral argument, *see, e.g.*, Oral Arg. Tr. at 57:22-62:22 [ECF No. 101]. And the underlying briefing regarding the full application of the Fourteenth Amendment's Equal Protection Clause to U.S. Citizens in Guam also undermines Plaintiffs' representations in this case that extending full U.S. citizenship to all American Samoans would not meaningfully threaten *fa'a Samoa*. *See, e.g.*, Pls.' Reply & Opp'n Br. at 30-31 [ECF No. 75]; Oral Arg. Tr. at 13:4-16, 78:5-79:23 [ECF No. 101].

Dated: August 6, 2019

Respectfully submitted,

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By: /s/ Jess M. Krannich

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CERTIFICATE OF SERVICE

I certify that on August 6, 2019, I electronically filed the foregoing **INTERVENORS' NOTICE OF SUPPLEMENTAL AUTHORITY** with the Clerk of this Court by using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users.

/s/ Jess M. Krannich

Jess M. Krannich